



## Massachusetts Department of Environmental Protection

Bureau of Waste Prevention – Solid Waste Management

Beneficial Use Determination

**BWP SW 39 Beneficial Use Determination – Commercial Products**

**BWP SW 40 Beneficial Use Determination – Regulated Systems**

**BWP SW 41 Beneficial Use Determination – Restricted Applications**

**BWP SW 42 Beneficial Use Determination – Unrestricted Applications**

**BWP SW 44 Beneficial Use Determination - Modification**

## **Instructions and Supporting Materials**

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- permit fact sheet
- completeness checklist

### Introduction

MassDEP *Permit Applications*, as well as *Instructions & Support Materials*, are available for download from the MassDEP Web site at [mass.gov/dep](http://mass.gov/dep) in two file formats: Microsoft Word® and Adobe Acrobat PDF®. Either format allows documents to be printed.

*Instructions & Support Materials* files in Microsoft Word® format contain a series of documents that provide guidance on how to prepare a permit application. Although we recommend that you print out the entire package, you may choose to print specific documents by selecting the appropriate page numbers for printing.

*Permit Applications* in Microsoft Word® format must be downloaded separately. Users with Microsoft Word® 97 or later may complete these forms electronically.

Permitting packages in Adobe Acrobat PDF® format combine *Permit Applications* and *Instructions & Support Materials* in a single document. Adobe Acrobat PDF® files may only be viewed and printed without alteration. *Permit Applications* in this format may not be completed electronically.



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### **1. What is the purpose of these determinations?**

Some types of solid waste may be used as an effective substitute for a commercial product or commodity. This is termed "beneficial use" of a solid waste. MassDEP must determine that this use of solid waste is beneficial and will not harm public health or the environment. The material is then classified as a secondary material and not as a solid waste. The approval may limit use of the material to a specific location or to a specific application of the material, or both.

Legal authority is found in MGL c. 21A, ss. 2 and 8, c. 111, ss. 150A. Regulatory authority is found in 310 CMR 19.000: Solid Waste Management Regulations, specifically 310 CMR 19.060, Beneficial Use of Solid Wastes.

### **2. Who must apply?**

Any individual, business or organization that wants to beneficially use solid waste materials or to modify an existing beneficial use determination approval.

#### **2a. Which application should I file, BWP SW 39, BWP SW 40, BWP SW 41, BWP SW 42 or BWP SW 44?**

The application you should use is determined by the intended use of the material as defined below. In addition, modifications of existing beneficial use determinations are subject to the modification category also listed below.

**BWP SW 39. Category 1 -- Use of Secondary Materials in Commercial Products.**

Products manufactured from secondary materials or secondary materials that are directly used as products are considered commercial products under the following conditions:

- When the product is used in a manner that is consistent with industry accepted product specifications or performance standards;
- When the product is controlled and managed throughout its lifecycle in a manner that effectively limits potential for illegal or inadvertent disposal or releases of hazardous material to the environment and exposure to people;
- When any adverse impacts or significant risks to public health, safety and the environment, including, but not limited to, nuisance conditions, can be evaluated and controlled.

Products applied to the land cannot be considered commercial products.



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BWP SW 40. Category 2 -- Use of Secondary Materials in Regulated Systems. Beneficial use of secondary materials at facilities permitted, approved or otherwise regulated by the Department.

BWP SW 41. Category 3 -- Use of Secondary Materials in Restricted Applications. Secondary materials that are beneficially used in applications that utilize risk management techniques in order to prevent adverse impact or significant risks to public health, safety and the environment, including, but not limited to, nuisances.

BWP SW 42. Category 4 -- Use of Secondary Material in Unrestricted Applications. Secondary materials that are beneficially used in applications that do not limit exposure to potential human or environmental receptors from secondary material constituents that have the potential to adversely impact or create a risk to public health, safety, or the environment, including, but not limited to, nuisance conditions. Unrestricted beneficial use proposals are subject to the most comprehensive risk evaluations.

BWP SW 44. Modification - This permit category is used any time an applicant wants to modify an existing previously approved beneficial use determination permit.

For more clarification on which application to use please see 310 CMR 19.060, the “Guidance for Beneficial use Determinations” or contact MassDEP.

**3. What other requirements should be considered when applying for these determinations?**

The proponent must gather the appropriate data on the physical, chemical and biological nature of the material for which a beneficial use determination is requested. The generator of the waste material may be able to provide most or all of the required information. All relevant analytical data must be documented and provided by a certified laboratory.

All risk assessments, evaluations and other analysis must be performed by qualified and appropriate professionals experienced in that field of expertise.

**Note:** These additional requirements are intended to serve as a guide to the applicant. It does not necessarily include all requirements.



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**4. What is the application fee?**

<b>BWP SW 39</b> – Commercial Products.....	\$2,000
<b>BWP SW 40</b> – Regulated Systems.....	\$2,000
<b>BWP SW 41</b> – Restricted Applications.....	\$3,750
<b>BWP SW 42</b> – Unrestricted Applications.....	Individual Rule Project
<b>BWP SW 44</b> – Modification .....	\$925

**5. What is the Primary Permit Location? What is the Reserve Copy Location?**

For beneficial use determinations that will be for a use contained within a single MassDEP Regional Office

*Primary Permit Location:*

**DEP't. of Environmental Protection**

\_\_\_\_\_ \* **Regional Office**

**Solid Waste Management**

*Reserve Copy Location:*

**Board of Health**

**(See note).**

\*Find your region <http://www.mass.gov/dep/about/region/findyour.htm>

For beneficial use determinations that are requesting approval for use at any location throughout the state

Department of Environmental Protection

Business Compliance Division

Bureau of Waste Prevention

One Winter Street

Boston, MA 02108

**Note:** A copy of the application must be sent to the board of health for the community in jurisdiction of which the material is to beneficially used unless MassDEP determines that the proposed use is not limited to a specific location and therefore it is not practical to identify the board of health. The applicant should consult the appropriate MassDEP regional office by phone or letter before the application is made.



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**6. Where can I get a copy of the timelines?**

The timelines are available on the MassDEP Website:  
[www.mass.gov/dep/service/online/fees.htm](http://www.mass.gov/dep/service/online/fees.htm)

**7. What is the annual compliance fee?**

There is no annual compliance fee for these determinations.

**8. How long are these determinations in effect?**

There is no specific time limit to a determination of beneficial use unless stipulated for one time use of the material or as otherwise limited by the approval.

**9. How can I avoid the most common mistakes made in applying for these determinations?**

- a. Submit all the data on the chemical, physical and biological properties of the waste required for MassDEP to make a determination.
- b. Submit a signed copy of the certification form.
- c. Submit fee and one copy of the MassDEP Transmittal Form  
<http://mass.gov/dep/service/online/trasmfrm.shtml> to:  
Department of Environmental Protection  
P. O. Box 4062  
Boston, MA 02211.



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**10. What are the regulations that apply to these determinations? Where can I get copies?**

These regulations include, but are not limited to:

- a. Solid Waste Management Regulations, 310 CMR 19.000.
- b. Timely Action Schedule and Fee Provisions, 310 CMR 4.00.

These may be purchased at:

**State Bookstore (in State House)**  
**Room 116**  
**Boston, MA 02133**  
**617-727-2834**

**State Bookstore**  
**436 Dwight Street, Room 102**  
**Springfield, MA 01103**  
**413-784-1376**

Also, unofficial copies of these regulations may be available on MassDEP's website at [mass.gov/dep](http://mass.gov/dep).



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**Application Completeness Check List**

- The MassDEP Transmittal Form is completed: <http://mass.gov/dep/service/online/trasmfrm.shtml>
- Application form has been completed.
- Certification statement submitted and signed (310 CMR 19.011).
- One copy of the application has been submitted to the local board of health, unless MassDEP determines that the proposed use is not limited to a specific location and therefore the board of health cannot be identified.

To submit the application package:

- Checklist items have been completed.
- Send one copy of the application along with one copy from the MassDEP Transmittal Form to:

Department of Environmental Protection

\_\_\_\_\_ \*Regional Office

Solid Waste Management

\* Find your region <http://www.mass.gov/dep/about/region/findyour.htm>

**AND** (if required by MassDEP, with one copy of the Transmittal Form)

Board of Health

\_\_\_\_\_ (Address)

\_\_\_\_\_ (City or Town)

- Send fee of:

\$2,000 for BWP SW 39

\$2,000 for BWP SW 40

\$3,750 for BWP SW 41

Individual Rule project for BWP SW 42

\$925 for BWP SW 44

along with a check or money order made payable to *Commonwealth of Massachusetts*, along with one copy of the MassDEP Transmittal Form to:

Department of Environmental Protection

P.O. Box 4062

Boston, MA 02211



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 BWP SW 44 Modifications

Transmittal Number \_\_\_\_\_

Facility ID# (if known) \_\_\_\_\_

**Important:**  
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



### A. Applicant Information

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City/Town

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Contact Person

\_\_\_\_\_  
Contact Telephone

**Directions:**  
 Complete A and B, as well as the applicable section of C.

Specify the plan/report and page numbers where the information is located.

Enter "N/A" if information requested is not applicable.

### B. Project Information

Which permit category are you applying for?

- BWP SW 39     BWP SW 40     BWP SW 41     BWP SW 42     BWP SW 44

	Plan/Report #	Page #	Page # DEP Use Only
1. Summary of the secondary material's proposed use & handling	_____	_____	_____
2. Description of how the proposed utilization will result in a viable & beneficial substitution for a commercial product or commodity	_____	_____	_____
a. Description of the feedstock or product the secondary material is replacing	_____	_____	_____
b. Description of the proposed use of secondary material	_____	_____	_____
3. Detailed description of the proposed facility that stores, processes, or otherwise handles the secondary material proposed for use	_____	_____	_____
a. Source or origin of secondary material	_____	_____	_____
b. Processing methods used in the preparation of secondary material	_____	_____	_____



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**B. Project Information** (continued)

	Plan/Report #	Page #	Page # DEP Use Only
c. Description of similar products currently & historically produced by facility	_____	_____	_____
d. Annual quantities, by weight and/or volume, of the secondary material proposed for beneficial use	_____	_____	_____
e. Storage requirements necessary for maintaining sufficient inventory to meet market demand	_____	_____	_____
4. Proposed location of use, if applicable, or types of locations where the secondary material will be used (e.g. highway rights-of-way, industrial zoned properties, etc.)	_____	_____	_____
5. Detailed physical & chemical characterization of both the secondary material proposed for beneficial use & the final product	_____	_____	_____
a. Physical properties: size, density, particle size and gradation, percent solids, organic fraction, moisture content/moisture capacity, etc.	_____	_____	_____
b. Biological properties: pathogens, etc.	_____	_____	_____
c. Chemical characterization	_____	_____	_____
i. Detailed list of chemical constituents found in the secondary material and the derived beneficial use product(s)	_____	_____	_____
ii. Identification of Critical Contaminants of Concern (CCCs)	_____	_____	_____
d. Description of sampling & analysis methods	_____	_____	_____
i. Quality assurance & quality control plan	_____	_____	_____



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**B. Project Information** (continued)

	Plan/Report #	Page #	Page # DEP Use Only
6. Evaluation & control of potential adverse health, safety or environmental impacts	_____	_____	_____
a. Toxics Use Reduction Plan (TURP), if applicable	_____	_____	_____
b. Risk management techniques being used (e.g. deed/use limitations, location restrictions, engineering controls, etc.)	_____	_____	_____
c. Best Management Practices (BMPs) employed	_____	_____	_____

**C. Category-Specific Information**

Complete only the applicable section.	Plan/Report #	Page #	Page # DEP Use Only
1. <b>BWP SW 39:</b> Use in Commercial Products, 310 CMR 19.060(14)			
a. Physical characterization of the commercial product	_____	_____	_____
b. Constituents (including hazardous materials) contained in the product manufactured using traditional materials or products	_____	_____	_____
c. Comparative analysis of the product manufactured using the secondary material versus the traditionally used material it is replacing	_____	_____	_____
i. Hazardous materials, including CCCs (on a weight & concentration basis)	_____	_____	_____
ii. Processing required for use	_____	_____	_____
iii. Storage & handling before actual use	_____	_____	_____



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**C. Category-Specific Information** (continued)

Complete only the applicable section.	Plan/Report #	Page #	Page # DEP Use Only
iv. Actual use	_____	_____	_____
v. Management or processing during its lifecycle, including, but not limited to, any destructive practices that reasonably may be expected to be employed in recycling or disposing of the material at the end of its useful life	_____	_____	_____
<b>2. BWP SW 40: Use of Secondary Materials in Regulated Systems, 19.060(15)</b>			
a. Operative DEP permit, order, or approval for the facility/site	_____	_____	_____
i. Terms and conditions of any such permit, order or approval relevant to the proposed use	_____	_____	_____
b. General description of the facility/site activities	_____	_____	_____
c. Appropriate numerical standards, risk management criteria and other applicable requirements as identified by DEP	_____	_____	_____
d. Identification, evaluation and control of potential significant risks from the storage, transfer, processing, treatment activities and use of the secondary material	_____	_____	_____
<b>3. BWP SW 41: Use of Secondary Materials in Restricted Applications, 19.060(16)</b>			
a. Concentrations of hazardous materials of concern in the material proposed for use	_____	_____	_____
b. Upper concentration limits (UCLs) for those hazardous materials	_____	_____	_____



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**C. Category-Specific Information** (continued)

Complete only the applicable section.	Plan/Report #	Page #	Page # DEP Use Only
c. Background concentrations of those hazardous materials	_____	_____	_____
i. Statewide	_____	_____	_____
ii. Site-specific	_____	_____	_____
d. Release and exposure pathways	_____	_____	_____
e. Risk management techniques used to prevent adverse impact or significant risks to public health, safety & the environment, including nuisance conditions	_____	_____	_____
i. Engineering controls	_____	_____	_____
ii. Use limitations	_____	_____	_____
iii. Other techniques	_____	_____	_____
f. Hazardous materials concentrations above UCLs	_____	_____	_____
g. Hazardous materials concentrations not below background	_____	_____	_____
i. Demonstration that these are within acceptable limits through (a) Numerical Standards or (b) Total Waste Reuse Risk	_____	_____	_____
h. Evaluation and control of significant risks to public health and safety	_____	_____	_____
i. Evaluation and control of significant risks to the environment	_____	_____	_____
j. End of use management	_____	_____	_____
k. Deed notification	_____	_____	_____



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**C. Category-Specific Information** (continued)

Complete only the applicable section.	Plan/Report #	Page #	Page #	DEP Use Only
<b>4. BWP SW 42: Use of Secondary Material in Unrestricted Applications, 19.060(17)</b>				
a. Description of proposed use	_____	_____		
b. Conservative, unrestricted general exposure assumptions	_____	_____		
c. Complete Section 3 (BWPSW41) on page 4 of this form	_____	_____		
<b>5. BWP SW 44: Modification</b>				
a. Description of Change	_____	_____		
b. Attach existing BUD	_____	_____		
c. Summation of data collection under existing BUD, if any	_____	_____		
d. Identification and submission of information needed to process requested modification	_____	_____		

**D. Certification: 310 CMR 19.011**

Any person, required by these regulations or any order issued by the Department, to submit papers shall identify themselves by name, profession, and relationship to the applicant and legal interest in the facility, and make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information including possible fines and imprisonment."

Print Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Position/Title \_\_\_\_\_

Date \_\_\_\_\_